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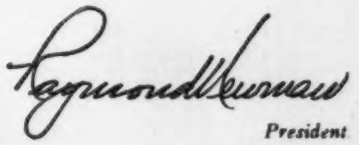
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Foreign corporations authorized to do business in North Dakota, which have not already done so, are required to requalify in that state before March 1, 1938; otherwise their authority to do business in North Dakota will terminate on that date.

Returns of Information at the source will be required during the next month or two on the following dates: *February 15:* California, Colorado, Maryland, New York, Oklahoma, Oregon, Utah and Vermont; *March 1:* Kansas, Massachusetts, Minnesota and Missouri; *March 15:* Alabama, Arizona, Arkansas, Delaware, Georgia, Idaho, Kentucky, Mississippi, Montana, North Carolina, North Dakota, South Carolina, West Virginia and Wisconsin; *March 30:* South Dakota; *March 31:* Iowa; *April 1:* New Mexico; *April 15:* Virginia; *May 15:* Louisiana. In addition, Returns of taxes withheld at the source will be required on February 15 in California, Maryland and New York, on March 31 in Iowa and on April 15 in Kentucky.



President

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for February

Corporation Law and Taxation Decisions of 1935-1937

A review of outstanding decisions relating to corporation law and taxes payable by corporations, rendered during the past two years, reveals the following:

This biennium produced a large number of cases on the subject of what constitutes doing business by a foreign corporation, both from the standpoint of the necessity of qualification and from that of the validity of service of process. The rulings made followed much the usual pattern of previous similar cases. A query frequently raised was whether the corporations involved were carrying on interstate commerce within a given state so as to claim immunity from taxation. Upon this point many of the decisions turned.

The courts of several states refused to entertain suits which would have called for their interference in the internal affairs of foreign corporations, and indicated that the courts of the states in which the companies were created were the proper forums to decide such matters.

In at least three states, the courts refused to give approval to amendments of charters which would have resulted in depriving stockholders of certain vested rights. (Delaware: *Keller et al. v. Wilson & Co., Inc.*, 190 A. 115; New York: *Breslav v. N. Y. & Queens Electric Light & Power Co. et al.*, 7 N. E. (2d) 708; New Jersey: *Rossmoore v. International Silver Co.*, Court of Chancery, Volume 119, page 19. [*Not reported.*])

The use or "compensating" type of tax was found a proper levy by the Supreme Court of the United States. (*Henneford et al. v. Silas Mason Co., Inc., et al.*, 57 S. Ct. 524.)

The chain store tax received further impetus in the finding by the highest court that there was no impropriety in a state's fixing the tax to be paid for each store within it by a classification made according to the number of units in the entire chain, regardless of where the various units might be located. (*The Great Atlantic & Pacific Tea Co. et al. v. Grosjean, Supervisor of Public Accounts et al.*, 57 S. Ct. 772; rehearing denied, 58 S. Ct. 3.)

The principle that a state might tax the intangibles of a foreign corporation which become localized within its borders arising in the course of its business conducted there and not taxed elsewhere—long a moot question—also received approval. (*Wheeling Steel Corporation v. Fox, State Tax Commissioner et al.*, 56 S. Ct. 773, 298 U. S. 193; *First Bank Stock Corporation v. State of Minnesota*, 57 S. Ct. 677.)

Domestic Corporations

Arkansas.

Corporation held a proper party defendant in suit based upon an improper increase by directors in their own salaries. This suit was instituted in the chancery court to review the action of directors of defendant company in increasing their salaries. But four of six directors were present at the time the increases were effected, one of them voting against the increases. The lower court had dismissed the complaint against the company for the reason that no relief was asked against it and that it was not a necessary or proper party. The Arkansas Supreme Court, in reversing the chancery court, held that "the corporation was a necessary party, because if the salaries had been wrongfully paid and a recovery had, it would be the property of the corporation." The court also adopted the view that "directors are precluded from fixing, increasing, or voting compensation to themselves for either past or future services by them as directors or officers, unless they are expressly authorized to do so by the charter or by the stockholders." *Cook v. Malvern Brick & Tile Company*, 109 S. W. (2d) 451. Commerce Clearing House Court Decisions Reporting Service Requisition No. 184847. Rose, Hemingway, Cantrell, & Loughborough of Little Rock, for appellants. A. T. Davies of Hot Springs, and House, Moses & Holmes of Little Rock, for appellees.

Illinois.

A dissolved corporation may not invoke the powers of a court of bankruptcy under section 77B. Respondent Illinois corporation was dissolved in 1931 by court decree. By statute, corporations whose charters had expired by limitation or otherwise continued their corporate capacity for two years for the limited purposes of collecting debts and selling and conveying their property. This period, as to the respondent, expired May 22, 1933. In 1935, certain persons, having obtained all outstanding shares of respondent company, endeavored to hold stockholders' and directors' meeting to effect the filing of a petition for reorganization under section 77B of the Federal Bankruptcy Act. "The sole question now for determination," observed the Supreme Court of the United States, "is whether, under the facts just detailed, a corporation, dissolved and put out of existence by the state which created it, may, nevertheless, itself invoke the powers of a court of bankruptcy under section 77B. The record does not present a case where creditors are the moving parties, or where there has been any act of bankruptcy committed by the corporation, or where any pertinent law of the state is in conflict with the federal bankruptcy laws." Reversing a decree of the United States Circuit Court of Appeals, Seventh Circuit, 86 F. (2d) 667, the court said: "The only power left to the corporation when this proceeding was brought was to finish pending cases begun within two years after its dissolution. With that exception, its

corporate powers were ended for all time and for all purposes. It was without authority to purchase the certificate issued at the mechanic's lien foreclosure sale, or to adopt resolutions authorizing proceedings under section 77B, or to bring a proceeding to effectuate a reorganization under that section. In respect of these matters the corporation was nonexistent." *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Building Corporation,* 58 S. Ct. 125. Frank H. Townes and Silas H. Strawn of Chicago, Ill., for petitioner. George I. Haight of Chicago, Ill., for respondent.

Kansas.

Corporation held not allowed to urge that the purchase of its own stock was an ultra vires act. Defendant Kansas corporation, with a view of reducing its capital stock, agreed to purchase certain of its own shares held by plaintiff bank, paying a portion of the price in cash and giving its note for the balance. When sued for the amount remaining due after additional payments had been made, the defendant alleged its purchase of its own stock to be *ultra vires* and attempted to rescind the contract to purchase. The Kansas Supreme Court said: "While the weight of authority is that a corporation, without express authority and when not prohibited by charter or statute, may buy and sell its own shares, if done in good faith, the rule in Kansas is to the contrary." In upholding the plaintiff's right to recovery, however, the court mentioned that the statutes of Kansas authorize a reduction of capital, although a method is not provided by which the reduction may be accomplished, and continued: "We are of the opinion that where proper steps are taken to decrease the capital stock of a corporation, and where the resolution for the decrease provides no method for retirement of shares, and where one or more stockholders are willing, at an agreed price, to surrender a sufficient number of shares to accomplish the reduction, and there is no objection to the reduction being accomplished in that manner, the corporation may not thereafter urge that the purchase by it of the shares so surrendered was an *ultra vires* act." *Security National Bank v. Crystal Ice & Fuel Company et al.,* 67 P. (2d) 527. Chester Stevens and W. D. Kimble, of Independence, for appellant. C. J. Bryant of Independence, for appellee Crystal Ice & Fuel Co. W. N. Banks, O. L. O'Brien and Walter L. McVey of Independence, for intervener O. L. O'Brien.

New York.

Appellate Division affirms County Court ruling that treasurer of a domestic corporation need prepare only one financial statement for stockholders during any one year under section 77, Stock Corporation Law. The decision of the Albany County Court in *Strope v. Albany Steel & Iron Supply Co., Inc.,* 297 N. Y. S. 8, (The Corporation Journal, November, 1937, page 34), to the effect that the treasurer of a domestic corporation need prepare only one financial

statement for stockholders during any one year under section 77 of the Stock Corporation Law, provided a copy of the statement first supplied in response to a demand is kept on file for the inspection of other stockholders during the remainder of the year, has been affirmed by the Appellate Division. "A statement and account of the assets and liabilities having been furnished, subsequent demands during the year are satisfied by exhibiting a copy of the one already made," were words used by the court in expressing its views. *Strope v. Albany Steel & Iron Supply Co., Inc.*, New York Supreme Court, Appellate Division, Third Department; 299 N. Y. S. 400. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185233. Murphy, Aldrich, Guy and Broderick (John H. Broderick, of counsel), of Troy, for plaintiff-appellant. George M. Simon of Albany, for defendant-respondent.

Stockholder held to have right to prosecute derivative action where receiver's refusal to institute suit to redress wrongs against the corporation is not based upon an unprejudiced exercise of judgment. In a stockholder's derivative action, the receiver of the corporation was made a party defendant with the permission of the court. The stockholder complained of alleged wrongs done to the corporation and asked that damages for such wrongs be paid to the corporation or its receiver. The defendants moved to dismiss the complaint under rule 112 of the Rules of Civil Practice, on the ground that it did not state facts sufficient to constitute a cause of action, and contended that the plaintiff cannot, as a stockholder, bring a derivative action for damages. The Appellate Division, Second Department, had sustained this contention. (The Corporation Journal, March, 1937, page 343.) The Court of Appeals, in reversing the Appellate Division, and upholding the stockholder's right to prosecute the action, said that the plaintiff in the complaint "alleges facts which show, *prima facie*, a wrong against the corporation committed by the persons named as defendants; that the affairs of the corporation are now in the control of the court acting through the receiver; that the receiver has refused to bring an action to redress such wrong, and that the refusal of the receiver is not based upon an unprejudiced exercise of judgment. These allegations bring this case within the principles upon which a stockholder's derivative equitable action is based. The effect of these allegations is not weakened or destroyed because another branch of the court might, if it saw fit, assert powers of control over the affairs of the corporation and overrule the refusal of the receiver to bring suit, but instead has given permission to a stockholder to bring the suit in behalf of the corporation. Choice there lies with the court. The alleged wrongdoers may not dictate how the choice should be exercised." *Koral v. Savory, Inc., et al.*, New York Court of Appeals, November 23, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 186187. Mortimer Hays and Abraham Marcus, for appellant. Joseph W. Gottlieb and H. Preston Coursen, for respondents.

Ohio.

Recapitalization plan, involving optional exchange of preferred stock with accumulated dividends for new prior preferred stock and common stock, upheld. Plaintiffs, as minority preferred stockholders, sought to restrain the consummation of a plan of recapitalization of an Ohio company. Dividends of 8% per annum had accumulated on the preferred stock to $26 per share, of which $8 per share was later paid. The plan called for the creation of a new class of six percent prior preferred stock which would have priority over the old preferred stock and the common stock. The old preferred stockholders were offered the opportunity to exchange their stock for the new preferred stock. Those participating in the plan were to receive for each share of the old preferred stock with accumulated dividends one and one-third shares of the new preferred stock and three-quarters of a share of common stock. "This plan," observed the Ohio Court of Appeals, Eighth District, Cuyahoga County, "was entirely optional with the preferred stockholders and if they did not exchange their old preferred stock under the plan it would continue to accrue dividends at the old rate and they would be entitled to these accruals before any dividends were paid on the common stock, precisely as their contract provided." There was no charter restriction upon the issuance of a prior preferred stock which would bear dividend rights and other rights on liquidation prior to the old preferred stock. More than the required percentage of preferred stock stipulated in the charter had voted in favor of the plan. The court, in refusing to issue the injunction, stressed the fact that the proposed plan was optional, and concluded that there was no violation of the contractual rights of the plaintiffs and that such vested rights as the preferred stockholders had amounted to a preferential right only, being the right to be paid the stipulated dividend before any common stockholder was to be paid any dividends. The Delaware case of *Keller et al. v. Wilson & Co., Inc.*, 190 A. 115, (The Corporation Journal, December, 1936, page 270) was cited by the court, and distinguished, it being pointed out that it differed from the present case in that it involved a plan which was not optional and which called for the cancellation of accumulated dividends. A request by the plaintiffs for a mandatory injunction directing the payment of a dividend on the preferred stock was also denied. *Johnson et al. v. Lamprecht et al.*, Ohio Court of Appeals, Eighth District, Cuyahoga County, November 22, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185847. M. B. & H. H. Johnson, for plaintiffs-appellees. Tolles, Hoggsett & Ginn, for defendants-appellants.

Pennsylvania.

Incorporator, receiving shares in consideration for services, held unrestricted in voting of these shares. Of three incorporators of a company, one contributed a going business and its stock in trade

and another contributed cash, each receiving a certificate for 249 shares. The third incorporator, a bookkeeper subsequently employed by the company, was issued a certificate for two shares, the others having agreed to give him one share each. The incorporator who contributed cash sought by an equity action to compel the third incorporator, the defendant, to transfer one share of his two shares to the former and to restrain the record holder from voting that share. The Superior Court of Pennsylvania concluded, from an examination of the testimony, that the defendant agreed to become associated with the corporation and give his services, and that this was the consideration for the issuance to him of the stock by the others. The court refused to rule that defendant's voting rights were limited by any trust, agreement or other circumstance and affirmed a decree dismissing the action. *Christmas v. Kennedy et al.*, 194 A. 773. David H. H. Felix and Felix & Felix of Philadelphia, for appellant. George C. Denniston of Philadelphia and Samuel H. High of Norristown, for appellees. Commerce Clearing House Court Decisions Reporting Service Requisition No. 185510.

Foreign Corporations

New York.

Maintenance of office, coupled with local sales of periodicals for cash, declared doing business for purpose of service of process. Defendant Illinois corporation moved to have service of summons upon it vacated and the complaint dismissed on the ground that it was not doing business in New York. The United States District Court, Southern District, New York, denied defendant's motion, however, as it was shown that defendant maintained an office in New York City in charge of an executive vice-president, where two salesmen and a stenographer were employed and solicitations made for a number of publications published in Chicago, both of subscriptions and advertising, contracts being forwarded to Chicago for approval or rejection, from which point all payments for rent, salaries and commissions on account of the New York office were made. It was also shown that it was the custom of the New York office to receive each month from 25 to 50 copies of each magazine for the purpose of selling them for cash to purchasers. The amounts so received, together with receipts from the sale of back issues were not remitted to the home office. Receipts from classified advertisements effected in New York, together with the proceeds derived from the sale of technical books and catalogs were not remitted to the home office in Chicago, but were also retained and utilized for current expenses of the New York office. The court concluded that these activities constituted doing business for the purposes of service of process under section 229 of the New York Civil Practice Act. *Winslow v. Domestic Engineering Company et al.*, 20 F. Supp. 576. W. Morton Carden of New York City, for plaintiff. Abel I. Smith of New York City, for defendant.

Utah.

Taking a note or guaranty for the payment of a debt is not doing business. Plaintiff foreign corporation, engaged in making interstate shipments of its product to defendant company, accepted a guaranty signed by three officers of defendant company, guaranteeing all charges plaintiff had made or might make for cooperage, cases and bottles containing the product sold to defendant. The contract of guaranty was signed in Utah. Plaintiff was a foreign corporation not licensed to do business in Utah. The lower court had dismissed the suit on the ground that entering into the guaranty in Utah was "doing business" there, and, as plaintiff had not qualified, the contract was void. The Utah Supreme Court reversed this judgment, holding that the guaranty was incidental to the business of selling goods in interstate commerce. "Ordinary steps to collect the sale price of interstate sold goods done within the borders of the state where the goods were delivered is not doing business," said the court. "Taking a note or guaranty for the payment of the debt is one of the means of assuring or collecting it." *Miller Brewing Company v. Capitol Distributing Company et al.*, Utah Supreme Court, October 27, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 184982; 72 P. (2d) 1056. W. B. Kelly of Salt Lake City, for appellant. E. R. Christensen of Salt Lake City, for respondents. (Utah CT, ¶ .405.)

Service of process set aside when made upon officers of an unlicensed foreign corporation in state on business unrelated to the corporation's affairs and at a time when it was not carrying on any business within the state. The president and the secretary of a foreign corporation, not licensed in Utah, were within that state in attendance at a meeting of the board of directors of a Utah corporation of which they were members, when they were served with summons in an action against the foreign corporation. These officers were not in Utah representing the foreign corporation and that corporation was not at the time engaged in the doing of any business in the state, although it had done business in Utah some months previous. The Supreme Court of Utah observed: "It is well settled, unless otherwise controlled by statute, that service of process on an officer of a foreign corporation casually or temporarily found within a state where the corporation is not then doing business will not confer jurisdiction to render judgment against the corporation. 8 Thompson on Corporations, (3rd Ed.) 1006, Sec. 6719. It is said the officers or agents of the corporation under such circumstances do not carry with them their official character or functions in connection with the foreign corporation. In other words, they do not thereby bring the corporation with them so that it may be subjected to the service of process." "It is apparent from the record that the Farmers Union Live Stock Commission, Inc. was not doing business in Utah at the time of the attempted service, nor were the officers attempted to be served representing or doing business for the corporation at the time of such service. The corporation, there-

"Corporate Alimony" runs into money

The officers of a New York corporation against which a judgment by default was declared out in Seattle, Washington, recently, were probably as much astonished by the way the action came about as they were shocked by the news of the judgment itself.

What had happened was this: When the corporation had qualified to do business in Washington one of the company's employes had been named as corporate representative. Now this employe, subsequently divorced, fell behind in his alimony payments and his ex-wife garnisheed the money due him from the company. And who should the papers in the garnishment proceedings be served on, of course, but the husband himself—in his capacity of the company's corporate agent!

Well, he kept perfectly quiet about the papers and kept his salary, too. His employers, having no way of knowing anything about the matter at all, did not respond on return day. Thus the judgment by default.

As a matter of fact the only strange or unusual feature of this case is the corporation's being in the position

of actually paying alimony. The real cause back of the default judgment was the policy of naming *business* employes as *corporate* representatives; and thousands of dollars —corporate alimony, so to speak— have been paid by corporations on such judgments because of it.

The antidote for this policy has been found by experienced corporation lawyers in the corporate representation rendered by The Corporation Trust Company, C T Corporation System and associated companies. It is described in a new pamphlet, "We've Always Got Along This Way," which also tells about the alimony case in Washington and many others in which this policy has brought trouble to corporations qualified outside the home state.

If you have any clients who have the habit of saying "We've Always Got Along This Way," this pamphlet will help them to understand better the position of the corporation attorney in this important matter.

Copies on request, without cost or obligation.

fore, cannot be said to have been subject to service of process in this State." *The Farmers Union Live Stock Commission, Inc. v. The District Court of the Seventh Judicial District of the State of Utah et al.,** 72 P. (2d) 448. Commerce Clearing House Court Decisions Reporting Service Requisition No. 184205. De Vine, Howell & Stine and A. W. Agee of Ogden, for plaintiff. King & King, Parnell Black and Knox Patterson of Salt Lake City, for defendants.

*The full text of this opinion is printed in **The Corporation Tax Service**, Utah volume, page 506.

Taxation

New York.

Legislative enabling act held not to confer upon city power to tax transactions in interstate commerce. Under an enabling act of the New York Legislature, New York City had, by local law, imposed a sales tax upon receipts from sales of tangible personal property in the city. The petitioner contended the tax did not apply, under the Federal Constitution, to receipts from transactions consisting of orders for machinery signed by the purchaser in New York City, a cash payment being made at the time, the order being expressly made "subject to acceptance by the Company at Dayton, Ohio." The order was then forwarded to Dayton, and the machines ordered manufactured and assembled there in accordance with the orders. Machines were occasionally shipped from Dayton, Ohio, directly to the customer, but usually the machines were placed in packages each addressed to the customer who ordered it, and these then shipped in carload lots to the petitioner's office in New York City, where they were unpacked and sent to the customer to whom they were addressed. The Court of Appeals of New York, in holding the tax could not be imposed under such circumstances, pointed out that here the "contract made outside of the State called for the delivery of goods which were manufactured outside of the State and which could not be procured within the State. Interstate commerce was contemplated and required by the contract of sale. The State has no power to impose a tax upon that kind of transaction. (Cf. *Cheney Bros. Co. v. Massachusetts*, 246 U. S. 147.) We do not determine the scope of the power delegated by the Legislature to the city under the enabling act. We hold only that the Legislature could not by any statute confer upon the city a power to tax proceeds of such transactions in interstate commerce." *National Cash Register Company v. Taylor*,* New York Court of Appeals, November 23, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 186129. Paul Windels, Corporation Counsel (Oscar S. Cox, Edmund B. Hennefeld, Meyer Bernstein and Frank J. Derrick, of counsel), for appellant.

*The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 5948.

West Virginia.

Gross income tax on contractors upheld as applied to such income under government contracts derived from activities within State. In *James v. The Dravo Contracting Company,* the Supreme Court of the United States had before it a West Virginia statute (Code 1931, Ch. 11, Art. 13) which, among other levies, imposed a tax "upon every person engaging or continuing within this State in the business of contracting," the tax to be "equal to two percent of the gross income of the business." A large part of the respondent company's work, under contracts with the United States, was performed at Pittsburgh, Pennsylvania, where materials and equipment were fabricated and stored awaiting delivery under the contracts. "It is clear," said the court, "that West Virginia had no jurisdiction to lay a tax upon respondent with respect to this work done in Pennsylvania. As to the material and equipment there fabricated, the business and activities of respondent in West Virginia consisted of the installation at the respective sites within that State and an apportionment would in any event be necessary to limit the tax accordingly." As to a contention that the tax was invalid on the ground that it laid a direct burden upon the Federal Government, the court observed that the respondent company was an independent contractor, and that the tax was not laid upon the Government, its property or officers, or upon an instrumentality of the Government, and it concluded that the tax, "so far as it is laid upon the gross receipts of respondent derived from its activities within the borders of the State does not interfere in any substantial way with the performance of federal functions and is a valid exaction." *James v. The Dravo Contracting Company,** Supreme Court of the United States, December 6, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 186893; 58 S. Ct. 208. Clarence W. Meadows, Homer A. Holt, and W. Holt Wooddell, of Charleston, W. Va., for appellants. William S. Moorhead, of Pittsburgh, Pa., and W. Elliott Nefflen and W. Champan Revercomb, of Charleston, W. Va., for appellee. Stanley Reed, Sol. Gen., of Washington, D. C., for the United States as *amicus curiae.*

* The full text of this opinion is printed in **The Corporation Tax Service, West Virginia volume, page 7221.**

Correction

The case of *Hahn Department Stores, Inc. v. State of Minnesota,* digested on page 86 of the January, 1938, Corporation Journal was decided by the District Court of the Second Judicial District, County of Ramsey, State of Minnesota, and not by the United States District Court.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 641. *J. D. Adams Manufacturing Company v. Storen et al.*, 7 N. E. (2d) 941. (The Corporation Journal, June, 1937, page 424.) Validity of Indiana Gross Income Tax Law as applied to gross income of an Indiana corporation derived from interstate and foreign commerce. **Appeal filed, December 17, 1937. Probable jurisdiction noted, January 10, 1938.**

ILLINOIS. Docket Nos. 23-24. *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Building Corporation*, 86 F. (2d) 667. Bankruptcy—Sec. 77B—voluntary petition by corporation dissolved by state law. **Appeal filed, April 7, 1937. Reversed, November 15, 1937.** (See page 102.)

WEST VIRGINIA. Docket No. 3. *James v. The Dravo Contracting Company*, 16 F. Supp. 527. Validity of West Virginia Gross Income Tax as applied to income received from the United States for construction of dams. **Probable jurisdiction noted, February 1, 1937; argument concluded, April 27, 1937; assigned for reargument, June 1, 1937; reargued, October 12, 1937. Reversed and remanded, December 6, 1937; opinion by Chief Justice Hughes.** (See page 111.)

* Data compiled from CCH **U. S. Supreme Court Service, 1937-1938.**

Regulations and Rulings

CALIFORNIA—The Attorney General has ruled that the assessor, in the assessment of fixtures and improvements for purposes of taxation, is not obliged to consider the manner of the annexing of the fixtures, the purpose for which used and the intention of the person who annexed them to the realty, but may "act upon the physical facts as he sees them and be guided accordingly, it being obviously impossible for him to make investigations to determine such matters as to the intention of annexation, or to decide disputes between various persons each having his own idea on the subject and all possibly being in disagreement as to whether the particular piece of property is or is not an improvement." (California Corporation Tax (CT) Service, ¶ 2485.)

KENTUCKY—Where a domestic corporation is seeking to dissolve its corporate entity or a foreign corporation is seeking to withdraw from the state, such corporation can be required by regulations to file an income tax report disclosing its income up to the date that it ceases to do business in Kentucky, is the view of the Attorney General of Kentucky in an opinion rendered to the Commissioner of Revenue. (Kentucky CT, ¶ 14-515.)

MARYLAND—The Comptroller has by regulation indicated that foreign corporations not doing business in Maryland are not required to make income tax returns or to pay the income tax. By regulation it is also provided that withholding of the tax at the source is not required on payments of any kind made to corporations or partnerships. (Maryland CT, page 1155.)

MASSACHUSETTS—The 10 per cent additional corporation excise taxes imposed in 1936 and 1937 are merely increases or additions to the existing corporation excise tax and should, under a recent Federal Income Tax Ruling, be accrued as a part of the tax to which they are additions. (I. T. 3126, XVI-42-8981 (p. 4), Massachusetts CT, ¶ 14-502.)

MONTANA—The State Board of Equalization has ruled that the Federal excise tax imposed on employers for Old Age Assistance purposes, the Federal excise tax imposed on employers for Unemployment Insurance purposes, as well as the contributions made by employers under Section 7, Chapter 137, Montana 1937 Session Laws, for unemployment benefits are deductible by the employer as a business expense for state income tax purposes. (Montana CT, ¶ 1032e.2.)

NEW YORK—The Attorney General of New York, in an opinion to the Department of Taxation and Finance, has ruled that the amendment made by Chapter 496, Laws 1937 to section 219-c, Tax Law, reducing the amount of penalty for non-payment of the franchise tax applies only to penalties which accrued or shall accrue subsequent to May 22, 1937 when the law became effective. (New York CT, ¶ 15-016.)

NORTH CAROLINA—Where a foreign corporation increases its capital stock after qualifying to do business in North Carolina, the only charge that can be made upon filing the certificate showing the increase is a filing fee of $5. (Opinion of Attorney General to Secretary of State, North Carolina CT, ¶ .414.)

Some Important Matters for February and March

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of the Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

CALIFORNIA—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30).—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1937.

DOMINION OF CANADA—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Returns of Information due on or before March 15.—Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

IOWA—Income Tax Return and Returns of Information and Returns of Tax Withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital Employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NEVADA—Annual Statement of business due not later than the month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW MEXICO—Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

NEW YORK—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Article 9 of the Tax Law.

NORTH CAROLINA—Income Tax Return and Returns of Information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Certificate of Authority required to be obtained before March 1.—Foreign Corporations.

Income Tax Return and Returns of Information due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Combined Excise (Income) Tax Return and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.

Bonus Tax Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during February.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

WISCONSIN—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

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A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

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